IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1835

RUTH A. WOLD,

Petitioner,

vs.

ORIN W. WOLD and GEORGE R. WOLD,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

RUTH A. WOLD, Petitioner, petitions the Court to issue a writ of certiorari to review

an order of the United States Court of Appeals for the Seventh Circuit entered on March 12th, 1979, affirming a judgment of the United States District Court for the Northern District of Illinois, Eastern Division, in federal question and diversity litigation, dismissing plaintiff's complaint for specific performance of a premarital contract and a bill to quiet title on the ground that the principles of comity and federalism required the court to abstain from exercising jurisdiction, the Court of Appeals doing so "under the Younger abstention doctrine" and the "'wise judicial administration' doctrine of the Colorado River case".

This petition is due to be filed on or before June 10th, 1979.

The Court of Appeals wrote an unpublished order not to be cited per circuit rule 35. It is set out as Appendix "A".

JURISDICTION

The jurisdiction of this Court is based on United States Code, Title 28, Section 1354(1). The jurisdiction of the district court is based on United States Code, Title 28, Sections 1331 and 1332. The jurisdiction of the Court of Appeals is based on United States Code, Title 28, Section 1291.

QUESTIONS PRESENTED FOR REVIEW

In the language used by the Court of Appeals, the questions presented for review are:

Whether analyzed in terms of the Younger abstention doctrine (Younger v. Harris, 401

U.S. 37 (1971)) or in terms of the "wise judicial adminstration" doctrine of the Colorado River case (Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976)), dismissal of this civil federal question and diversity suit, with assessment of costs against petitioner, was appropriate.

We prefer our own statement:

Whether by the conduct of the district court in dismissing this suit for specific performance of a premarital contract and a bill to quiet title, causes of action not pending in any other court, and the conduct of the Court of Appeals in affirming the judgment of dismissal, the federal courts have wrongfully abstained from exercising their jurisdiction, and said action is treason to the Constitution of the United

States, depriving petitioner of her procedural rights and property without due process of law, and denying to her the protection and equal protection of the laws, by the United States by its Judicial Department, in violation of her federal rights under the Fifth Amendment to the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United States, Article III, Section 1:

> "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Section 2:

> "The judicial Power shall extend to all Cases, in Law and Equity, aris-

ing under this Constitution, the Laws of the United States * * * ; —to Controversies * * * —between Citizens of different States."

" * * . In all the other Cases before mentioned, the supreme court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

United States Code, Title 28, Section 1331:

"(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

United States Code, Title 28, Section 1332:

"(a) The district courts shall have original jurisdiction of all civil actions where the matter in controvery exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—(1) citizens of different States; * * * ."

United States Code, Title 28, Section 1291:

"The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, * * * , except where a direct review may be had in the Supreme Court."

United States Code, Title 28, Section 1254:

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

"(1. By writ of certiorari upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; * * * ."

The Constitution of the United States, Amendment V:

"No person shall * * * be deprived of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

This case, in its simpliest aspect, is merely a diversity suit for specific performance of a premarital contract between husband and wife, entered into on the eve of their marriage, for and in consideration of marriage and other considerations stated therein, conveying certain lands in McHenry County, Illinois, to the petitioner, the prospective wife, and a bill to quiet title to said lands in her, the now wife.

This suit, in its broadest aspect, challenges the validity and finality of a judgment of the Circuit Court of McHenry County, Illinois, in other litigation between the parties, not involving the premarital agreement, but involving the same property, and the validity of a judicial

issued under it, purporting to reconvey title to said property acquired by the wife from her husband by deeds executed and delivered to her after marriage, on the ground that she was a constructive trustee of said property under said deeds, having received title to them under a purported oral promise to reconvey the title to the husband on demand, which she has refused to do.

The Statement of the Case made by the Court of Appeals is substantially correct, but it is incorrect to the extent that it indicates that the Indenture and Premarital Agreement dated September 19th, 1968, was involved in the litigation in the State court before October 3rd, 1974. That deed was not involved in the litigation leading to the order of October 3rd, 1974, that

litigation dealing with two deeds dated May 15th, 1969, and two deeds dated August 28th, 1969, the only deeds under attack in the pleadings in the consolidated case in the circuit court.

The Statement of the Case made by the Court of Appeals is also incorrect in that it indicates that the State court has merely failed to act on petitioner's motion filed June 13th, 1977, to vacate the orders of October 3rd, 1974, and May 13th, 1977, and the two orders of May 20th, 1977, and to revoke the Judicial Deed dated May 20th, 1977. It has simply ignored the motion and continued to treat the order of October 3rd, 1974, as a final enforceable and appealable order, and the Judicial Deed as a valid deed, and proceeded with other portions of the case, over petitioner's protest.

The Court of Appeals has ignored the following allegations of the complaint in this case, that were called to its attention at Page 30 of the Brief and Argument For Appellant in that Court, reading as follows:

> "Plaintiff has been deprived of her property, and of her right to a prompt and speedy trial, and of her right to due process of law, and of her right to the protection and equal protection of the laws, and of her right to a remedy for injuries and wrongs, by the State of Illinois, by the Circuit Court of McHenry County, Illinois, in said litigation, in violation of her fundamental rights and of her Federal rights under the 14th, Amendment, Section 1, To The Constitution of the United States, and of her State rights under Article I, Section 2, and Section 12, of the Constitution of the State of Illinois, which is, in itself, a violation of her Federal rights under the 14th Amendment, Section 1, to the Constitution of the United States (A D1 par 50 p 32). In addition, the Circuit Court of McHenry County, Illinois, has failed to pass on any of the Federal and State constitutional questions raised by Plaintiff in the consolidated case, but has simply

denied all her motions and petitions for relief, and this failure is itself a denial of due process of law, and of the protection and equal protection of the laws, and of a remedy for an injury and wrong, in violation of her Federal rights under the 14th Amendment, Section 1, to the Constitution of the United States, and under Article I, Section 2, and Section 12, of the Constitution of the State of Illinois(A D1 par 51 p 32)."

The United States Court of Appeals has overlooked another point. The complaint was filed on October 27th, 1977. At that time the Illinois 10-year Statute of Limitations had not run on petitioner's cause of action for specific performance of the premarital contract of September 19th, 1968, which became effective on her marriage on September 21st, 1968. Unless the Statute of Limitations was tolled by the pendency of this suit in the Federal courts or is otherwise not applicable, petitioner has been damaged by the dismissal of her suit.

ARGUMENT AMPLIFYING REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

This suit is primarily a diversity suit for specific performance of a premarital agreement and to quiet title to real estate, conventional actions which are not pending in any other court, and legitimate means of testing the validity and finality of a judgment of any court, and the district court has no right to abstain from exercising its jurisdiction, and the Judgment of February 1st, 1978, dismissing it for the stated reason that "To grant plaintiff relief, given the status of her State case, would violate every precept of comity and federalism" because "the State Court should be given every opportunity to adjudicate the federal claims presently pending" is treason to the Constitution of the United States, depriving her

her of her procedural rights and property without due process of law, and denying to her the protection and equal protection of the laws, by the United States by its Judicial Department, in violation of her federal rights under the Fifth Amendment to the Constitution of the United States, and this petition for writ of certiorari should be granted, and the judgments below reversed and the cause should be remanded with directions, on the basis of the constitutional and statutory provisions cited, and the decision of this Court in Cohen v. Virgina, 6 Wheat (US) 264, 404, 5 L ed 257, 291, where Chief Justice Marshall said:

> "It is most true that this court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction which is not given, then to usurp that which is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is exercise our best judgment, and conscientiously to perform our duty."

We see no good reason why the district courts, and the Court of Appeals, should not be bound by the same duty.

By what authority can a district court and the Court of Appeals refuse to entertain jurisdiction of a suit for specific performance of a premarital agreement, and a bill to quiet title to real estate, filed to test the validity and finality of a judgment of a State court, and for an injunction to prevent the enforcement of the judgment, and for dis-

covery, and for damages for a tort, and require a plaintiff in such an action, who by virtue of the Constitution of the United States, and by statute enacted pursuant to that Constitution, is entitled to file it in a district court, to file it in a State court? By what authority may they refer that plaintiff to a State court, that has had ample opportunity to pass on Federal constitutional questions raised by the parties in their litigation in both courts but which has chosen to ignore them, to pass on those constitutional questions?

Petitioner asserts there is none.

The Colorado River Water Cons. Dist. v. United States, 424 U.S. 800, 813, case is not applicable because the State court has made no state determination of pertinent

State law, and the Younger v. Harris, 401 U.S. 37(1971), and Huffman v. Pursue, Ltd., 420 U.S. 592 (1974), cases are not applicable because the State civil suit is not a State proceeding, and is not a State civil proceeding, and is not such a State civil proceeding such as were involved in those cases, and is not based on a State statute believed to be unconstitutional.

We are quite certain that this Court never intended those cases to be applicable to private civil litigation, and that as a matter of judicial power and due process of law cannot be extended to this case, and, in any event, the Court of Appeals has usurped the prerogative of this Court to determine the issue.

This petition for a writ of certiorari

should be granted because of the importance of the questions raised, and the need for uniformity in decision in regard to said questions, which can only be determined by a decision of this Court.

The fact that the Court of Appeals has seen fit to write an unpublished order not to be cited per circuit rule 35 is not without significance that it is not sure of the position that it has taken. Petitioner should not be singled out for special treatment either one way or the other.

CONCLUSION

This petition for a writ of certiorari should be granted because of the importance of the constitutional and procedural issues raised.

Petitioner firmly believes that Chief Justice Marshall is right.

Respectfully submitted,

Hugh M Matchett

HUGH M. MATCHETT,

Petitioner's Attorney.

APPENDIX

A

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago, Illinois 60604

Unpublished Order
Not To Be Cited
Per Circuit Rule 35

Submitted: March 7, 1979
March 12, 1979

Before
Hon. WILBER F. PELL, JR., Circuit Judge
Hon. ROBERT A. SPRECHER, Circuit Judge
Hon. WILLIAM J. BAUER, Circuit Judge

RUTH A. WOLD, Plaintiff-Appellant,	)	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-1332	vs.	
ORIN W. WOLD and GEORGE R. WOLD, Defendants-Appellees	)	No. 77-C-3996

John Powers Crowley,
Judge.

ORDER

The issue on this appeal is whether the district court properly held that the principles of comity and federalism required the dismissal of the plaintiff's complaint.

In order to gain a proper understanding of the facts of this intr-family property dispute, it is necessary to review the liti-

gative history of the parties, dating back to 1969 in the state courts. The plaintiff (Ruth) brought her federal suit in 1977, and since the complaint was dismissed, this court must accept the factual allegations of the complaint as true on this appeal. Little v. Walker, 553 F.2d 193 (7th Cir. 1977), cert. denied, 435 U.S. 932 (1978).

It is alleged that Ruth and the defendant Orin entered into a contract in contemplation of marriage in 1968. In return for recited consideration, Orin agreed to and did convey to Ruth certain real property. The deed to this property was not recorded until December 29, 1976.

In 1969, the defendant George, Orin's adult son by a previous marriage, commenced a suit against Orin in the McHenry County, Illinois Circuit Court, seeking a declaration that he, George, owned a one-half interest in the real property which Orin had previously conveyed to Ruth, and that Orin held that interest as a constructive trustee for George.

After Orin left Ruth, he commenced, in April, 1970, an action for divorce against her in the McHenry County Circuit Court. In this suit, Orin also sought a declaration that Ruth held the real property in question as constructive trustee for him, on the ground of undue influence. In August, 1970, Ruth counterclaimed for separate maintenance. In February, 1972, George's earlier constructive trust suit was consolidated with the divorce/separate maintenance suit.

The consolidated case went to trial in April, 1974, before Judge William Gleason.

The issue of the ownership of the property in question was tried first, and in September, 1974, Judge Gleason filed a memorandum opinion, in which he concluded, based on the credibility of the witnesses, that Orin's version of the facts was the truthful one. It was found that Orin had conveyed the property to Ruth because of the impending suit by George, relying on her to reconvey it after the danger had passed. A constructive trust, for the benefit of Orin, was imposed on the property. On October 3, 1974 a decree was entered imposing the constructive trust and ordering Ruth to reconvey the property. The decree concluded with the words, "There is no just reason to delay the enforcement of this Decree." Subsequently, Judge Gleason withdrew from the remaining portions of the case and retired from the bench. Ruth then appealed to the Illinois Appellate Court, which affirmed in Wold v. Wold, 43 Ill. App. 3d 773, 357 N.E. 2d 627 (1976). The Illinois Supreme Court denied leave to appeal.

A judicial deed to the property was issued and delivered to Orin on May 20, 1977, and he recorded it the same day. Ruth filed the most recent in a series of motions to vacate the October 3, 1974 decree on June 13, 1977. Grounds asserted were, inter alia, that the decree is interlocutory; that the Illinois Appellate Court affirmance is a nullity for want of jurisdiction; that the October 3, 1974 decree was obtained through the fraud and perjury of Orin; and that Judge Gleason's withdrawal from the case has the effect of "aborting" the decree, so that the new trial judge is required to redetermine the issues underlying the decree himself. So far as the record shows, this motion is still

pending before the McHenry County Circuit Court.

Ruth's federal suit was commenced on October 27, 1977. Ruth invoked federal question and diversity jurisdiction. In her complaint and amended complaint she sought, inter alia, a declaration that each essential allegation of the complaint was well founded in law and fact; specific performance of the 1968 contract entered in contemplation of marriage; a holding that the October 3, 1974 decree of the McHenry County Circuit Court is interlocutory ans aborted; a holding that the judicial deed is void; and an injunction against the enforcement of the October 3, 1974 decree.

Each of the two defendants moved to dismiss the complaint. By memorandum opinion and judgment dated February 1, 1978, Judge Crowley granted the motions to dismiss and entered judgment for the defendants. Judge Crowley perceived the federal suit as an attempt to interfere with the state court proceeding. Noting that the plaintiff's federal claims were then pending before the state court by virtue of her most recent motion to vacate, Judge Crowley stated that the state court should be given every opportunity to adjudicate the federal claims. Citing Huffman v. Pursue, Ltd., 420 U.S. 592 (1975) the court indicated that to grant relief to the plaintiff would violate every precept of comity and federalism.

Plaintiff filed a timely notice of appeal. Each of the defendants has filed a motion to affirm without oral argument, pursuant to Circuit Rule 15.

It is apparent that the doctrine of res judicata and collateral estoppel are intimately involved in the consideration of this appeal. The plaintiff has already litigated large parts of her claim with respect to the ownership of the property in question in state court, and has taken the matter as far as the Illinois Supreme Court. It is firmly established that a party may not, after receiving an adverse decision in state courts, relitigate the matter in federal courts. England v. Louisiana State Board of Medical Examiners, 375 U.S. 411 (1964). The federal district courts do not assume to exercise what amounts to appellate jurisdiction over state courts. Resolute Insurance Co. v. State of North Carolina, 397 F.2d 586 (4th Cir.), cert. denied, 393 U.S. 978 (1968); Reich v. City of Freeport, 388 F. Supp. 953 (N.D. Ill. 1974), affid, 527 F.2d 666 (7th Cir. 1975).

The plaintiff seeks to avoid this result by contending that the state appellate decisions, obtained as a result of her own appeals, are a nullity, because the appellate courts lacked jurisdiction, since the entire case is still pending at the trial court level.

This argument is unavailing. To the extent that the issues are still pending, so that res judicata is not strictly applicable, the abstention doctrine of the Younger[1] variety comes into play.

1. Younger v. Harris, 401 U.S. 37 (1971). For a discussion of the various types of ab-

The Younger doctrine prohibits, under certain circumstances, federal court interference with pending state proceedings. Comity is the vital consideration behind this doctrine. Juidice v. Vail, 430 U.S. 327 (1977).

The Supreme Court has never gone so far as to decide whether the Younger doctrine applies to private civil litigation, such as the present case. See Trainor v. Hernadez, 431 U.S. 434, 445 n.8 (1977). We do not decide any such broad question in this appeal. But under the circumstances of this case, involving eight years of state court litigation prior to the commencement of the federal suit, in a case involving heavy overtones of res judicata[2] and federal court review of state court determinations, we hold that the Youmger doctrine applies. To grant the relief sought by the plaintiff would reflect negatively on the stat court's ability to adjudicate federal claims. Trainor v. Herndez, supra, 431 U.S. at 446. This court has expressed the need for special respect for the state judicial process, when federal jurisdiction is not invoked until after the commencement of the state litigation. Cousins v. Wigoda, 463 F.2d 603 (7th Cir. 1972).

stention, see Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471, 477 (1977).

2. The Supreme Court has alluded to the res judicata implications of particular applications of the Younger doctrine. Huffman v. Pursue, Ltd., 420 U.S. 592, 607 n.19 (1975).

As was true in Judice v. Vail, supra, the plaintiff has an opportunity to raise her federal claims in the state proceeding, and she will not be permitted to short-circuit the state case by invoking federal jurisdiction.

As mentioned, the Supreme Court has never decided whether the abstention doctrine applies to private civil litigation. Even if it does not, however, dismissal of this suit was still appropriate. Conceptually, this case is similar to Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976). In that case, the Supreme Court concluded that none of the branches of the abstention doctrine applied, but affirmed the dismissal of the federal suit anyway for reasons of "wise judicial administration." The court discussed factors favoring dismissal under this doctrine as including the goal of avoiding piecemeal litigation. Another factor was the order in which jurisdiction was obtained. The court also mentioned the rule that the court which first assumes jurisdiction over property may exercise that jurisdiction to the exclusion of other courts. 424 U.S. at 818.

In this case, state court jurisdiction was invoked eight years before the commencement of the federal suit. Parts of the state proceedings are still pending before the state court, and the parts already litigated bear strong overtones of res judicata. It would be difficult to imagine a more appropriate case for dismissal in the name of "wise judicial administration."

Whether analyzed in terms of the Younger

abstention doctrine or in terms of the "wise judicial administration" doctrine of the Colorado River case, dismissal was appropriate in this case. The motions to affirm without oral argument are hereby GRANTED, and the judgment of the United States District Court for the Northern District of Illinois, Eastern Division is hereby AFFIRMED.

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BRIEF IN OPPOSITION TO PETITIONER'S APPLICATION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER A SUBSTANTIAL FEDERAL QUESTION WARRANTING CONSIDERATION BY THIS COURT IS PRESENTED BY THE ACTION OF THE SEVENTH CIRCUIT COURT OF APPEALS IN AFFIRMING DISMISSAL OF PLAINTIFF'S COMPLAINT ON GROUNDS OF *RES JUDICATA*, COLLATERAL ESTOPPEL, AND, TO THE EXTENT THAT ISSUES MAY STILL HAVE BEEN PENDING IN THE STATE COURT, ON THE GROUNDS OF FEDERALISM AND COMITY IN TERMS OF ABSTENTION OR WISE JUDICIAL ADMINISTRATION.

STATEMENT OF THE CASE

This Petition arises out of the dismissal by the United States District Court for the Northern District of Illinois, Eastern Division, of an action filed by the Petitioner to challenge the validity and finality of a Decree of the Circuit Court of McHenry County, Illinois and the affirmance of that dismissal by the Seventh Circuit Court of Appeals.

As noted in the opinion of the Court of Appeals, "It is necessary to review the litigative history of the parties dating back to 1969 in the state courts." (Pet. Br., pp. 1a-2a) That history is extensive and, in summary fashion, is as follows:

Petitioner herein, Ruth A. Wold, is the former wife of Respondent Orin W. Wold. Co-respondent, George R. Wold, is Orin's son. Commencing in 1969 and extending through 1974, various intra-family actions, crossclaims and counterclaims were filed in the Circuit Court of McHenry County, Illinois by the parties to this Petition against one another. The various actions were thereafter consolidated and, on motion of the Petitioner herein and over objection of the Co-respondents George R. Wold and Orin W. Wold, the Circuit Court of McHenry County, Illinois entered an order on April 11, 1974 which provided, *inter alia*, that on trial the question of the validity of a deed from Orin W. Wold to Ruth A. Wold be first heard and determined. On cross-motion of George R. Wold, trial with respect to said issue was set for April 30, 1974. The trial commenced accordingly.

Following four weeks of trial, the State Trial Court, on September 12, 1974, entered a memorandum opinion

in favor of Orin W. Wold and against Ruth A. Wold, and a judgment order and Decree were entered thereon on October 3, 1974, declaring Ruth A. Wold a constructive trustee of the real and personal property in issue for the benefit of Orin W. Wold. In that Decree, the State Court found that Orin W. Wold had conveyed to Ruth A. Wold, his wife, approximately 422 acres of real estate located in McHenry County, Illinois. The State Court also found that on May 15, 1969, Orin W. Wold had transferred to Ruth A. Wold, his wife, all of the corporate stock that he owned in the Dietzgen Company and in the Bull Valley Management Company. The State Court also found that the documents of conveyance had been prepared by Ruth A. Wold and that she had actually prepared three sets of deeds although only set of deeds was recorded as of the time of the trial. The set of deeds that she had recorded prior to trial in the State Court had been dated May 15, 1969.

On October 15, 1974, Petitioner herein, Ruth A. Wold, filed a post-trial motion challenging the Trial Court's order of October 3, 1974. The post-trial motion was denied, and she thereafter appealed to the Illinois Appellate Court for the Second Appellate District. The Appellate Court affirmed. *Wold v. Wold*, 43 Ill. App.3d 773 (2nd Dist. 1976)

Petitioner herein, Ruth A. Wold, thereafter filed a petition for leave to appeal to the Supreme Court of Illinois. The petition was denied on March 31, 1977. (Ill. Supreme Court, Docket No. 49170) No petition was filed with this Court for writ of certiorari.

On April 12, 1977, the Petitioner herein filed a motion with the State Trial Court to vacate its order of October 3, 1974, alleging, *inter alia*, that the order was erroneous, interlocutory, not final and appealable, void

or voidable, based on the perjured testimony of Orin W. Wold, deprived her of her property without due process of law, denied her a right to a remedy for wrongs allegedly inflicted upon her, denied her procedural due process and equal protection of the laws and asserted, for the first time in seven years of litigation, a deed allegedly executed by Orin W. Wold on September 19, 1968, but not recorded until December 29, 1976.

The petition of Ruth A. Wold to vacate the State Court's Decree of October 3, 1974 was denied on May 13, 1977. On that same date, Ruth A. Wold filed an "Answer to the Petition For the Execution of a Judicial Deed", wherein she realleged the allegations contained in her prior motion of April 12, 1977, including the allegation that the order of the Illinois Appellate Court for the Second Appellate District affirming the Trial Court was a nullity for want of jurisdiction, the same allegations later contained in the complaint filed in the United States District Court, the dismissal of which constitutes the subject matter of this Petition. On May 20, 1978, the Circuit Court of McHenry County, Illinois issued a Judicial Deed conveying all of the real estate involved from Ruth A. Wold to Orin W. Wold. On June 13, 1977, Ruth A. Wold filed in the State Trial Court yet another motion to vacate the orders of October 3, 1974, May 13, 1977 and May 20, 1977, and to revoke the Trial Court's Judicial Deed dated May 20, 1977.

While that motion was still pending in the Circuit Court of McHenry County, Illinois, Petitioner herein filed suit in the United States District Court for the Northern District of Illinois.

Premising jurisdiction upon 28 U.S.C. §§ 1331 and 1332, Petitioner herein, Ruth A. Wold, sought the following relief from the United States District Court: (1) a

declaratory judgment that each of the essential allegations of her complaint was well-founded in law and fact; (2) a judgment granting specific performance of a pre-marital agreement dated September 19, 1968; (3) a judgment holding the October 3, 1974 Decree of the Circuit Court of McHenry County, Illinois to be an "interlocutory and aborted order," and enjoining its enforcement; (4) a judgment declaring the Judicial Deed of the Circuit Court of McHenry County, Illinois to be null and void for lack of jurisdiction; (5) a judgment declaring George R. Wold a constructive trustee for the benefit of Petitioner herein, Ruth A. Wold, of certain real estate involved in over seven years of litigation between the parties; (6) a judgment quieting title to the real estate involved in the name of the Petitioner herein; and (7) a money judgment in the sum of Two Hundred Thousand and No/100 Dollars ($200,000.00), including Fifty Thousand and No/100 Dollars ($50,000.00) punitive damages.

On motion of each defendant thereto (Respondents herein), the complaint and first supplemental complaint were dismissed, pursuant to the District Court's Memorandum Opinion and Judgment Order, dated February 1, 1978. On appeal, the Seventh Circuit Court of Appeals affirmed.

This Petition emanates from that ruling.

REASONS FOR DENIAL OF WRIT

No substantial federal question has been raised by the action of the District Court in dismissing the Petitioner's complaint, an action which involved the same parties, the same property and the same issues present in eight years of state court litigation, part of which was still pending by way of motion upon motion at the time the Petitioner's complaint was filed with the District Court. In essence, the Petitioner's action involves nothing more than an attempt to get federal court review of a state court ruling. After first invoking the jurisdiction of the entire state court system, the Petitioner, after receiving decisions adverse to her position throughout, now challenges the very jurisdiction which she, herself, invoked. The very concept of federalism, as well as the doctrines of *res judicata*, collateral estoppel, wise judicial administration and abstention, mandated dismissal of the Petitioner's complaint. Had the District Court exercised its jurisdiction over this matter, the very integrity of state court proceedings and judgments would have been jeopardized.

I.

THE PETITIONER HAS FAILED TO RAISE ANY SUBSTANTIAL FEDERAL QUESTION WARRANTING THIS COURT'S CONSIDERATION.

A. The Principles Of *Res Judicata* And Collateral Estoppel Mandated Dismissal Of The Petitioner's Complaint.

There is no substantial federal interest in testing the validity and finality of state court judgments, particularly under the circumstances present in the instant case. Petitioner's assertion, at page 8 of her Petition, that her federal complaint was "merely a diversity suit

for specific performance of a premarital contract . . . . and to quiet title . . .," separate and distinct from any action pending in the state court proceeding, flies in the face of the foregoing undisputed facts. Petitioner, herself, concedes at pages 8 and 13 of her Petition, and her complaint on file with the District Court confirms, that the very premise of her federal action is to challenge the validity and finality of the October 3, 1974 judgment of the Circuit Court of McHenry County, Illinois.

All matters placed in issue before the District Court were fully litigated and determined adversely to the Petitioner in eight years of state court litigation. Even if this were not the case, all matters asserted by the Petitioner were "within the compass of the issues determined therein, and were, therefore, as effectively adjudicated as if they had been specifically put forward and specifically adjudged." *Hudson v. Lewis*, 188 F.2d 679 (5th Cir. 1951), *Resolute Insurance Company v. State of North Carolina*, 276 F. Supp. 660 (E.D. N.C. 1967), *aff'd.*, 397 F.2d 586 (4th Cir. 1968). The Petitioner may not, after receiving an adverse decision in the state courts, relitigate her claims in the federal courts. *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964). *Resolute Insurance Company v. State of North Carolina*, 397 F.2d 586 (4th Cir. 1968), *cert. denied*, 393 U.S. 978 (1968), *Reich v. City of Freeport*, 388 F. Supp. 953 (N.D. Ill. 1974), *aff'd.*, 527 F.2d 666 (7th Cir. 1975).

The Petitioner concedes as much, but, portraying the epitome of a disgruntled litigant who will not abide by the rule of law which states that at some point the litigation must terminate, nevertheless, realleges that the State Trial Court, in proceeding to judgment against

her, and the Appellate Court, in affirming that judgment, denied her due process and equal protection of the laws; that the Appellate Court, in entertaining her appeal, was without jurisdiction, and that, accordingly, neither her federal action nor her motions to the State Trial Court for vacation of its Order is barred by the doctrine of *res judicata*. Rather, the Federal Court is advised to ignore all that has gone before.

The Seventh Circuit Court of Appeals correctly found this argument unavailing. Clearly, no substantial federal question has been presented to this Court for consideration.

B. Preserving The Integrity Of State Court Proceedings Compelled Dismissal Of The Petitioner's Complaint.

The only overriding interest present in this litigation was to preserve the integrity of state court proceedings. Noting the protracted litigative history of the parties in the state courts, and observing that comity is the vital consideration behind the abstention doctrine enunciated in *Younger v. Harris*, 401 U.S. 37 (1971), the Court of Appeals held that to the extent the doctrines of *res judicata* and collateral estoppel were not strictly applicable, dismissal of the Petitioner's complaint was still appropriate. Citing the decisions of this Court in *Juidice v. Vail*, 430 U.S. 327 (1977) and *Trainor v. Hernandez*, 431 U.S. 434 (1977), the Court of Appeals states:

> "As mentioned, the Supreme Court has never decided whether the abstention doctrine applies to private civil litigation. Even if it does not, however, dismissal of this suit was still appropriate. Conceptually, this case is similar to *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976). In that case, the Supreme Court concluded that none of the branches of the abstention doctrine applied, but affirmed the dismissal of the federal suit anyway for reasons of "wise judicial administration." The court discussed factors favoring dismissal under this doctrine as including the goal of avoiding piecemeal litigation. Another factor was the order in which jurisdiction was obtained. The court also mentioned the rule that the court which first assumes jurisdiction over property may exercise that jurisdiction to the exclusion of other courts. 424 U.S. at 818.
>
> In this case, state court jurisdiction was invoked eight years before the commencement of the federal suit. Parts of the state proceedings are still pending before the state court, and the parts already litigated bear strong overtones of res judicata. It would be difficult to imagine a more appropriate case for dismissal in the name of "wise judicial administration."
>
> Whether analyzed in terms of the *Younger* abstention doctrine or in terms of the "wise judicial administration" doctrine of the *Colorado River* case, dismissal was appropriate in this case." (Pet. Br., pp. 7a-8a)

The Petitioner's argument that the Court of Appeals, in so holding, abused its discretion and usurped the power of this Court ignores the limited application of these doctrines to the particular facts of this case as well as the underpinnings of federalism and comity upon which this finding was based.

Clearly, the State of Illinois has a legitimate and substantial interest in the enforceability and integrity of its judicial decisions. Moreover, the so-called constitutional issues raised by the Petitioner in her complaint in the District Court could have been raised by the Petitioner at any time during the state court proceedings and were, in fact, the subject of motions pending before the Circuit Court of the Nineteenth Judicial Circuit, McHenry County, Illinois at the time the Petitioner filed

her complaint with the District Court. The respective rights of the Petitioner and Respondents to all of the property that is the subject of the Petitioner's complaint in the District Court have been established as a matter of law in the State of Illinois; and any Federal action to alter those rights in any way based on claims that could have been and were being raised in the Illinois Courts would constitute an improper intrusion on the right of the State of Illinois to see its common-law enforced in its own Courts.

In *Juidice v. Vail*, 430 U.S. 327 (1977), Mr. Justice Rehnquist, quoting in part from the Court's opinion in *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975), states, at pages 335-336 of the Opinion,

> "whether disobedience of a Court sanctioned subpoena, and the resulting process leading to a finding of contempt of Court, is labeled civil, quasi-criminal, or criminal in nature, we think the salient fact is that federal-court interference with the State's contempt process is 'an offense to the State's interest . . . likely to be every bit as great as it would be were this a criminal proceeding.'"

If Federal Court interference with the State of New York's contempt process is an offense to the State's interests sufficient to warrant dismissal of the Federal Court action, Petitioner Ruth A. Wold's request that a U.S. District Court interfere with the enforcement of a Decree entered by an Illinois Circuit Court and affirmed by the Appellate Court of Illinois on an appeal initiated by the Petitioner herself is no less significant an offense to the State's interest.

CONCLUSION

For all of the foregoing reasons, Petitioner's application for a writ of certiorari should be denied.

Respectfully submitted,

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